

AMENDED IN ASSEMBLY AUGUST 26, 2002
AMENDED IN ASSEMBLY SEPTEMBER 5, 2001
AMENDED IN ASSEMBLY JUNE 29, 2001
AMENDED IN SENATE MAY 2, 2001

SENATE BILL

No. 483

Introduced by Senator Sher

February 22, 2001

An act to amend ~~Section 2796.5~~ Sections 2796.5 and 21151.7 of, and to add ~~Section~~ Sections 2773.3, 2773.5, and 2797 to, the Public Resources Code, relating to mining.

LEGISLATIVE COUNSEL'S DIGEST

SB 483, as amended, Sher. Surface mining and reclamation.

The

(1) *The existing Surface Mining and Reclamation Act of 1975 prohibits a person from conducting surface mining operations without obtaining a permit from the lead agency for the operation, and submitting and receiving approval for a reclamation plan and financial assurances from that lead agency.*

This bill would prohibit a lead agency from approving a reclamation plan and financial assurances for a surface mining operation for gold, silver, copper, or other metallic minerals that is located on, or within one mile of, any Native American sacred site, as defined, and in an area of special concern, as defined, unless the reclamation plan requires that all excavation be backfilled and graded to achieve the approximate original contours of the mined lands prior to mining, and the financial

assurances are sufficient in amount to provide for the backfilling and grading.

The bill would exempt from those provisions any surface mining operation that receives final approval of a reclamation plan and financial assurances from a lead agency by September 1, 2002.

By imposing additional duties on lead agencies, this bill would impose a state-mandated local program.

(2) *The act establishes a state abandoned minerals and mineral materials mine reclamation program for the purpose of administering funds received by the state under the federal Surface Mining Control and Reclamation Act of 1977, or through amendments to specified federal general mining laws. Existing law authorizes funds appropriated by the Legislature to be used for the state abandoned minerals and mineral materials mine reclamation program. Existing law also, until January 1, 2003, authorizes the Director of Conservation to remediate or complete reclamation of abandoned mined lands that meet specified requirements and to make the costs of remediation a lien on the affected property.*

This bill would extend the time for the director to remediate or complete reclamation of abandoned mined lands to January 1, 2007.

This bill would require the director, not later than January 1 of each year to report to the Legislature on any abandoned mine remediation projects that are proposed for the following year.

(3) *The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement, including the creation of a State Mandates Claims Fund to pay the costs of mandates that do not exceed \$1,000,000 statewide and other procedures for claims whose statewide costs exceed \$1,000,000.*

This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to these statutory provisions.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: ~~no~~ yes.



The people of the State of California do enact as follows:

SECTION 1. *Section 2773.3 is added to the Public Resources Code, to read:*

2773.3. (a) *In addition to other reclamation plan requirements of this chapter and regulations adopted by the board pursuant to this chapter, a lead agency may not approve a reclamation plan for a surface mining operation for gold, silver, copper, or other metallic minerals or financial assurances for the operation, if the operation is located on, or within one mile of, any Native American sacred site and is located in an area of special concern, unless both of the following criteria are met:*

(1) *The reclamation plan requires that all excavations be backfilled and graded to do both of the following:*

(A) *Achieve the approximate original contours of the mined lands prior to mining.*

(B) *Grade all mined materials that are in excess of the materials that can be placed back into excavated areas, including, but not limited to, all overburden, spoil piles, and heap leach piles, over the project site to achieve the approximate original contours of the mined lands prior to mining.*

(2) *The financial assurances are sufficient in amount to provide for the backfilling and grading required by paragraph (1).*

(b) *For purposes of this section, the following terms have the following meaning:*

(1) *“Native American sacred site” means a specific area that is identified by a federally recognized Indian Tribe, Rancheria or Mission Band of Indians, or by the Native American Heritage Commission, as sacred by virtue of its established historical or cultural significance to, or ceremonial use by, a Native American group, including, but not limited to, any area containing a prayer circle, shrine, petroglyph, or spirit break, or a path or area linking the circle, shrine, petroglyph, or spirit break with another circle, shrine, petroglyph, or spirit break.*

(2) *“Area of special concern” means any area in the California desert that is designated as Class C or Class L lands or as an Area of Critical Environmental Concern under the California Desert Conservation Area Plan of 1980, as amended, by the United States Department of the Interior, Bureau of Land Management, pursuant to Section 1781 of Title 43 of the United States Code.*

1 SEC. 2. *Section 2773.5 is added to the Public Resources*
2 *Code, to read:*

3 2773.5. *Section 2773.3 does not apply to any surface mining*
4 *operation for which the lead agency has issued final approval of*
5 *a reclamation plan and the financial assurances prior to*
6 *September 1, 2002.*

7 SEC. 3. Section 2796.5 of the Public Resources Code is
8 amended to read:

9 2796.5. (a) The director, with the consultation of appropriate
10 state and local agencies, may remediate or complete reclamation
11 of abandoned mined lands that meet all of the following
12 requirements:

13 (1) No operator having both the responsibility and the financial
14 ability to remediate or reclaim the mined lands can be found within
15 the state.

16 (2) No reclamation plan is in effect for the mined lands.

17 (3) No financial assurances exist for the mined lands.

18 (4) The mined lands are abandoned, as that term is used in
19 paragraph (6) of subdivision (h) of Section 2770.

20 (b) In deciding whether to act pursuant to subdivision (a), the
21 director shall consider whether the action would accomplish one
22 of the following:

23 (1) The protection of the public health and safety or the
24 environment from the adverse effects of past surface mining
25 operations.

26 (2) The protection of property that is in danger as a result of past
27 surface mining operations.

28 (3) The restoration of land and water resources previously
29 degraded by the adverse effects of surface mining operations.

30 (c) The director may also consider the potential liability to the
31 state in deciding whether to act under this section. Neither the
32 director, the department, nor the state, or its appointees,
33 employees, or agents, in conducting remediation or reclamation
34 under this section, shall be liable under applicable state law, and
35 it is the intent of the Legislature that those persons and entities not
36 be liable for those actions under federal laws.

37 (d) (1) The remediation or reclamation work performed under
38 this section includes, but is not limited to, supervision of
39 remediation or reclamation activities that, in the director's
40 judgment, is required by the magnitude of the endeavor or the

1 urgency for prompt action needed to protect the public health and
2 safety or the environment. The action may be taken in default of,
3 or in addition to, remedial work by any other person or
4 governmental agency, and regardless of whether injunctive relief
5 is being sought.

6 (2) The director may authorize the work to be performed
7 through department staff, with the cooperation of any other
8 governmental agency, or through contracts, and may use rented
9 tools or equipment, either with or without operators furnished.

10 (3) In cases of emergency where quick action is necessary,
11 notwithstanding any other provision of law, the director may enter
12 into oral contracts for the work, and the contracts, whether written
13 or oral, may include provisions for the rental of tools or equipment
14 and in addition the furnishing of labor and materials necessary to
15 accomplish the work. These emergency contracts are exempt from
16 approval by the Department of General Services pursuant to
17 Section 10295 of the Public Contract Code.

18 (4) The director shall be permitted reasonable access to the
19 abandoned mined lands as necessary to perform any remediation
20 or reclamation work. The access shall be obtained with the consent
21 of the owner or possessor of the property or, if the consent is
22 withheld or otherwise unobtainable, with a warrant duly issued
23 pursuant to the procedure described in Title 13 (commencing with
24 Section 1822.50) of Part 3 of the Code of Civil Procedure.
25 However, in the event of an emergency affecting the public health
26 or safety, the director may enter the property without consent or the
27 issuance of a warrant.

28 (e) For any remediation or reclamation work accomplished, or
29 other necessary remedial action taken by any governmental
30 agency, the operator, landowner, and the person or persons who
31 allowed or caused any pollution or nuisance are liable to that
32 governmental agency to the extent of the reasonable costs actually
33 incurred in remediating, reclaiming, or taking other remedial
34 action. The amount of the costs is recoverable in a civil action by,
35 and paid to, the governmental agency and the director to the extent
36 of the director's contribution to the costs of the remediation,
37 reclamation, cleanup, and abatement or other corrective action.

38 (f) (1) The amount of the costs constitutes a lien on the affected
39 property upon service of a copy of the notice of lien on the owner
40 and upon the recordation of a notice of lien, which identifies the

1 property on which the remediation or reclamation was
2 accomplished, the amount of the lien, and the owner of record of
3 the property, in the office of the county recorder of the county in
4 which the property is located. Upon recordation, the lien has the
5 same force, effect, and priority as a judgment lien, except that it
6 attaches only to the property posted and described in the lien. The
7 lien shall continue for 10 years from the time of the recording of
8 the notice of the lien unless sooner released or otherwise
9 discharged, and may be renewed.

10 (2) Not later than 45 days after receiving a notice of lien, the
11 owner may petition the court for an order releasing the property
12 from the lien or reducing the amount of the lien. In this court
13 action, the governmental agency that incurred the costs shall
14 establish that the costs were reasonable and necessary. The lien
15 may be foreclosed by an action brought by the director, for a
16 money judgment. Money recovered by a judgment in favor of the
17 director shall be used for the purposes of this chapter.

18 (g) If the operation has been idle for more than one year without
19 obtaining an approved interim management plan, an application
20 for the review of an interim management plan filed for the purpose
21 of preventing the director from undertaking remediation or
22 reclamation of abandoned mined lands under this section shall be
23 voidable by the lead agency or the board upon notice and hearing
24 by the lead agency or the board. In the event of conflicting
25 determinations, the decision of the board shall prevail.

26 (h) “Remediate,” for the purposes of this section, means to
27 improve conditions so that threat to or damage to public health and
28 safety or the environment are lessened or ameliorated, including
29 the cleanup and abatement of pollution or nuisance or threatened
30 pollution or nuisance.

31 (i) “Threaten,” for the purposes of this section, means a
32 condition creating a probability of harm, when the probability and
33 potential extent of harm make it reasonably necessary to take
34 action to prevent, reduce, or mitigate damages to persons,
35 property, or the environment.

36 (j) This section shall apply to abandoned mined lands on which
37 the mining operations were conducted after January 1, 1976.

38 (k) The director may act under this section only upon the
39 appropriation of funds by the Legislature for the purposes of
40 carrying out this section.

(l) Nothing in this section limits the authority of any state agency under any other law or regulation to enforce or administer any cleanup or abatement activity.

(m) This section shall remain in effect only until January 1, 2007, and as of that date is repealed, unless a later enacted statute that is enacted before January 1, 2007, deletes or extends that date.

~~SEC. 2.—~~

SEC. 4. Section 2797 is added to the Public Resources Code, to read:

2797. (a) Not later than January 1 of each year, the director shall report to the Legislature on any abandoned mine remediation projects that are proposed for the following fiscal year.

(b) The report required to be prepared pursuant to subdivision (a) shall include information on all of the following:

(1) The source of funding and scope of work to be performed.

(2) Any other governmental agencies having jurisdiction over any proposed project, if any, and the role of any of those affected governmental agencies with respect to the proposed project.

(3) Any impacts on the local community or any other stakeholders that may result from the proposed project.

(4) Any potential legal consequences that may result from the commencement of remediation work.

(c) The report required to be prepared pursuant to this section shall be made available on the department's Internet Web site.

SEC. 5. *Section 21151.7 of the Public Resources Code is amended to read:*

21151.7. Notwithstanding any other provision of law, a lead agency shall prepare or cause to be prepared by contract, and certify the completion of, an environmental impact report for any open-pit mining operation ~~which~~ *that* is subject to the permit requirements *or reclamation plan requirements* of the Surface Mining and Reclamation Act of 1975 (Chapter 9 (commencing with Section 2710) of Division 2) and utilizes a cyanide heap-leaching process for the purpose of producing gold or ~~other precious metals~~ *other metallic minerals*.

SEC. 6. *This act is not intended to interfere with the ability of the federal government to designate particular land uses applicable to federal government owned lands or to conflict with the ability of the federal government to permit or allow particular land use activities to occur on federal lands. This act is intended*

1 *to be a state regulatory framework consistent with California*
2 *Coastal Comm’n v. Granite Rock (1987) 480 U.S. 572.*
3 *SEC. 7. Notwithstanding Section 17610 of the Government*
4 *Code, if the Commission on State Mandates determines that this*
5 *act contains costs mandated by the state, reimbursement to local*
6 *agencies and school districts for those costs shall be made*
7 *pursuant to Part 7 (commencing with Section 17500) of Division*
8 *4 of Title 2 of the Government Code. If the statewide cost of the*
9 *claim for reimbursement does not exceed one million dollars*
10 *(\$1,000,000), reimbursement shall be made from the State*
11 *Mandates Claims Fund.*

